

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WP(C).No. 18852 of 2007(T)

PETITIONER:

**C.CHANDRABABU, S/O CHANDRASEKHARAN,
KOCHUPUTHUVAL VEEDU, POONTHURA,
THIRUVANANTHAPURAM,
CHAIRMAN, PAZHACHIRADEVI TEMPLE.**

BY ADV. SRI.BECHU KURIAN THOMAS.

RESPONDENTS:

- 1. C.RAVEENDRAN,
PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.**
- 2. P.MURUGAN,
MEMBER OF PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.**
- 3. MOHANDAS,
JOINT SECRETARY TO PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.**
- 4. K.RAMESH BABU, TREASURER,
PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.**
- 5. G.VIKRAMAN,
BOARD MEMBER OF PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.**
- 6. P.VIJAYAN,
BOARD MEMBER OF PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.**

7. B.VENU,
BOARD MEMBER OF PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.
8. V.SUDARSANAN,
BOARD MEMBER OF PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.
9. K.PEETHAMBARAN,
BOARD MEMBER OF PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.
10. R.SANAL KUMAR,
BOARD MEMBER OF PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.
11. M.S.SUNIL,
BOARD MEMBER OF PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.
12. K.P.KRISHNAN,
BOARD MEMBER OF PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.
13. S.SUDHAKARAN,
BOARD MEMBER OF PAZHANCHIRA DEVI TEMPLE TRUST,
PAZHANCHIRA, THIRUVANANTHAPURAM.
14. THE PAZHANCHIRA DEVI KSHETRAM TRUST,
AMBALATHAR, PAZHANCHIRA, THIRUVANANTHAPURAM.
15. C.CHANDRA MOHANAN,
S/O CHANDRASEKHARAN, KOCHUPUTHUVAL VEEDU,
POONTHURA, THIRUVANANTHAPURAM.
16. P.SADANANDHAN,
TC 48/723, PUTHUVAL PUTHEN VEEDU,
POONTHURA, THIRUVANANTHAPURAM.
17. R.SUSEELAN,
TC 48/5765, VEDANTHARA VEEDU,
POONTHURA, THIRUVANANTHAPURAM.
18. C.CHANDRASENAN,
POONTHURA, THIRUVANANTHAPURAM.

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**19. B.MAHINDRAN, KOTTAPPURATHU VEEDU,
POONTHURA, THIRUVANANTHAPURAM.**

BY ADV. SRI.SERGI JOSEPH THOMAS.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/10/2007,THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

prv.

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE BYE-LAWS OF THE TRUST.

EXT.P.2: COPY OF THE PLAINT IN O.S. 1/2003 (ORIGINALLY FILED AS O.P. 112/2002) ON THE FILES OF DISTRICT COURT, THIRUVANANTHAPURAM.

EXT.P.2.A: COPY OF THE PROCEDURE FOR ELECTION PUBLISHED BY THE PETITIONER.

EXT.P.3: COPY OF THE TYPED DOWN ORDER DTD. 26/08/06 IN I.A. 2181/06 IN .S. 1/03 APPOINTING AN ADVOCATE COMMISSIONER FOR THE ELECTION.

EXT.P.4: COPY OF THE ADVOCATE COMMISSIONER DTD. 05/09/2006.

EXT.P.5: COPY OF THE ORDER DTD. 29/09/06 IN W.P.(C). 25485/06.

EXT.P.6: COPY OF THE JUDGMENT DTD. 13/10/06 IN W.P.(C). 26076/06.

EXT.P.7: COPY OF THE PETITION IN I.A. NO. 3006/06 DTD. 21/11/2006.

EXT.P.8: COPY OF THE OBJECTION DTD. 26/11/2006 FILED BY THE PETITIONER.

EXT.P.9: COPY OF THE ORDER DTD. 11/06/2007 IN I.A. 3006/06 IN O.S. 1/2003 ON THE FILES OF THE DISTRICT COURT, THIRUVANANTHAPURAM.

RESPONDENT'S EXHIBITS:

EXT.R3.A: COPY OF THE AFFIDAVIT AND PETITION IN I.A. NO. 3004/06 IN O.S. NO. 1/2003 DTD. 21/11/2006.

EXT.R3.B: COPY OF THE AFFIDAIT AND PETITION IN I.A. NO. 3005/06 IN O.S. NO. 1/2003 DTD. 21/11/2006.

EXT.R3.C: COPY OF THE AFFIDAVIT AND PETITION IN I.A. NO. 3006/06 IN O.S. NO. 1/2003 DTD. 21/11/2006.

EXT.R3.D: COPY OF THE MEMO FILED BY THE PLAINTIFFS IN O.S. NO. 1/2003 DT. 26/11/2006.

EXT.R3.E: COPY OF THE AFFIDAVIT AND PETITION IN I.A. NO. 3102/2006 DT. 01/12/2006.

EXT.R3.F: COPY OF THE COMMON ORDER IN IA. NOS. 2549/06 AND 3102/06 IN O.S. 1/2003 DTD. 18/12/2006.

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EXT.R3.G: COPY OF THE AFFIDAVIT AND PETITION IN I.A. NO. 73/2007 DT. 04/01/2007.

**EXT.R3.H: COPY OF THE ELECTION NOTIFICATION DTD. 24/06/2007 ISSUED BY THE
ADVOCATE COMMISSIONER DTD. 24/06/2007.**

EXT.R3.I: COPY OF THE NOTICE DTD. 07/07/2007 OF THE TRUST BOARD MEETING.

**EXT.R3.J: COPY OF THE NOTICE DTD. 23/09/2007 NAVARATRI MAHOLSAVAM IS
SCHEDULED TO BE HELD FROM 12/10/07 TO 21/10/07 PUBLISHED BY PRESIDENT &
SECRETARY OF THE COMMITTEE.**

//TRUE COPY//

prv.

M.N. KRISHNAN, J.

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W.P.C. NO. 18852 OF 2007

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Dated this the 11th day of October, 2007.

J U D G M E N T

This writ petition is filed to quash the order in I.A.3006/06 in O.S.1/03. The brief facts necessary for the disposal of the writ petition are stated as follows. The suit is one filed by six members of the Pazhanchira Devi Temple Trust under Section 92 of CPC for removal of defendants 1 to 13 from the managing committee and to disqualify them and then for proper conduct of the election etc. I.A.3006/06 is filed to set aside the election conducted on 27.8.06 and for declaring the managing committee so elected as illegal. Sri.T. Chandrasekhara Pillai, Advocate(Retired District Judge) was appointed as Commissioner. It is alleged that he did not have sufficient time to go through the election process. The voters list shows a number of 75 members out of which the Commissioner has marked 11 persons as dead or not available. He had marked '4' by a round and one as suspended. Thereafter he had deducted 16 and shown the

balance as 59. But later he had fixed the members as 57 and the half to constitute a quorum as 29. Thereafter, he would add that one person namely Mohan was unwell and he had submitted a representation and therefore according to him the total members available were 29 and they constitute the quorum. C1(f) is the voters list and it consists of 75 persons. The Commissioner has given a mark as 'X' which indicates for either dead persons or persons not available. Serial Nos.2, 16, 19, 20, 21, 23, 24, 29, 45, 52 and 53 are such persons. Against Sl.No.12 suspended is noted. Against Sl.Nos.9, 10, 39 and 63 round marks are given but nothing is written. The said list does not contain any signature of the office bearers but bears the seal of the Chairman. The Commissioner has signed the list relied on by the Commissioner for the conduct of election in C1(m) which only contains names of 57 persons. No reason or explanation is forth coming for omission of Sl.Nos. 22 and 67 included in C1(f). The significance of the total numbers and the persons present are on account of the minimum fixed for a quorum of

the meeting which has to elect the members. If 75 - 11 is the total then 32 is the quorum. If 75 -16 is the total then 30 must be the quorum. If 57 is the total 29 must be the quorum. The Commissioner at page 13 of his evidence would depose that he did not see the minutes book at the time of production of voters list. He would say there was no dispute regarding voters list. In page 16, he would depose that he did not compare C1(m) list with C1(f). so far as it related to mark 'X' he would depose that he did not verify it with any other document. He would also depose that he does not know the basis on which Ext.C1(m) had been prepared. It is rudimentary that in an election process voters list is sacramental and it must be correct. In this case no materials are furnished to show how the number of voters is fixed as 57. since 50% is the minimum quorum and the C1(f) shows 75 total members. A duty is cast on the persons who support the election to explain it. It is not done.

2. Now I will refer to page 25 of C1 file. Here the procedure for election is notified. The voters list is to be

published on 14.8.06, objections to be raised by 16.8.06, draft publication of the voters list to be done on 18.8.06, nominations to be received from 19.8.06, after scrutiny on 22.8.06 withdrawal on 24.8.06 and the election is to be held on 27.8.06. No document is produced to show that the draft voters list had been published. Nothing is produced in evidence to show about the scrutiny. The Commissioner in page 18 of his deposition would depose that on 27.8.07 scrutiny was not complete, adds nomination scrutiny complete . He submits that withdrawal has to be after scrutiny and to a pin pointed question he would depose that he does not know whether anybody had withdrawn after 24.8.06. according to the materials available 17 persons had submitted there nominations and it is stated that one S.Raju and R.S.Suseelan had withdrawn their nominations. C1(o) and C1(p) are their nominations. There is no endorsement on the same to show the withdrawal. C1(h) and C1(i) are the letters of withdrawal. There is nothing therein to indicate that it has been received by somebody on 24.8.06. True it

bears the date 24.8.06. If really nominations are withdrawn it must bear an endorsement of the person who is authorized to do it. Just because it is signed by the Commissioner on questioning it cannot be taken as a complete proof for withdrawal within the stipulated time. This also creates suspicion. A perusal of the nomination papers submitted will show that 8 nominations had been received on 18.8.06 whereas the opening date for filing the nomination is 19.8.06. A litigation is pending and election is conducted. Certainly one will expect meticulous following of the procedural compliance. So the alleged withdrawal is also suspicious.

3. Now, let me consider about the persons who participated. According to the defendants as per the minutes only 23 persons were present whereas the Chairman would contend 28 persons were present at the time of meeting and one person attended in the beginning and left on account of illness with permission of the Commissioner.

4. As per the minutes book only 23 members were present. According to the plaintiffs the Secretary did not permit all to sign the minutes and went away with the minutes and the Commissioner has issued a notice to him. The Commissioner as PW1 in page 10 of his evidence had deposed that the Secretary was present till the completion of the election and that himself, the Secretary and Chairman were sitting next to each other. All the persons signed on the book kept in the table and nobody had taken it away. He would add Register-. vote” If really there had been any hindrance to anybody from signing in the minutes book it should have been reported to the police or to the Court at once. Without doing it appending some statements from some persons at a later point of time is not sufficient. Therefore, there is nothing reliable to show the presence of 28 persons at that time.

5. Now, let me consider the case of G.Mohan. Ext.C1(u) is a letter alleged to be submitted by him before the Chairman of the trust to the effect that he cannot sit in

the meeting for a long time and therefore he must be treated as present and proceeded further with. This assumes considerable significance for the reason that even if the total membership is 57 for the quorum there must be 29. Ext.C1 (c) is addressed to the Chairman whereby Mohan expresses his inability to attend the meeting on 27.8.06. the Commissioner also endorses that the candidate could not attend the meeting for the reasons stated. Ext.C1(u) is addressed on the same date wherein it is stated that he is not able to sit for a long time in the meeting. C1(c) and C1 (u) are mutually contradictory to each other. A perusal of his signature in the nomination form at page 15, his signature while proposing Mr.Surendran at page 9, C1(c) and C1(u) would indicate that all is not well with the same. I do not know why the Commissioner had taken so much of strain to make his presence in the meeting when he was not there.

6. As per the bylaws of the trust convening of a meeting is the duty that is cast upon the Secretary and the Chairman can convene the meeting only after a requisition to

the Secretary to conduct it and when he does not comply with the same. No document is produced to show that the Secretary has been called upon to convene the meeting. The learned District Judge while considering the matter in detail had arrived at a decision regarding the draw backs and incorrectness of the process of conducting election. In paragraph 27 of the order the District Judge has mentioned that election was said to be conducted in the presence of 29 members which included defendants 15 to 17. These additional defendants 15 to 17 denied their presence on 27.8.06 and had sworn an affidavit to that effect. The learned counsel for the writ petitioner would contend that the affidavit of a living person cannot be admitted in evidence without subjecting them to cross-examination. It is a legally correct position but here is a case where the election is challenged and prima facie a book maintained in the ordinary course of business namely Ext.P1 minutes show that these persons were not present on that date. So coupled with the affidavit it may not be safe to come to a conclusion that

these persons also had participated in the election process. It is also contended now that the plaintiff did not prosecute the matter and some of the defendants had been transposed as the plaintiff for the conduct of the case. It is also indicative of the factum of interestedness of the plaintiff in the whole matter. So on an overall analysis of the entire materials and the discussions which I had made above in detail regarding the factual matrix I find that there is nothing to interfere with the order of the learned District Judge. I may also refer to the Commissioner's report wherein the Commissioner had strained himself in very many occasions to make the whole election process a legally valid one. When a Commissioner is appointed by a Court, his duty is to foresee and oversee what is happening and he need not have to take any strain to validate or invalidate the conduct of elections. The factum of non-presence of Mohan is evidenced by Ext.C1(c) but it is attempted to be explained away by getting C1(u) which I had discussed in the earlier paragraphs of this judgment. So, from these discussions, I hold that the

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order passed by the learned District Judge in setting aside the election does not suffer from any illegality, irregularity or infirmity and therefore the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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